



1 The first two days the hearing was conducted in Mount Vernon,  
2 Washington; the last two the hearing was held at the Board's offices  
3 in Lacey, Washington. The proceedings were officially reported.

4 Appellant Tailfin, Incorporated, was represented by its attorney  
5 John E. Woodring. Respondent Skagit County was represented by John R.  
6 Moffat, Chief Civil Deputy Prosecutor. Jay J. Manning, Assistant  
7 Attorney General appeared for the Department of Ecology. Intervenor  
8 Hanson Properties, Incorporated, was represented by Richard U. Chapin,  
9 attorney at law. Friends of Cypress Island appeared by Gary T. Jones,  
10 attorney at law.

11 Witnesses were sworn and testified. Exhibits were admitted and  
12 examined. Post-hearing briefs were submitted, the last being received  
13 by the Board on February 10, 1987. From the testimony, exhibits and  
14 contentions of the parties, the Board makes these

15 FINDINGS OF FACT

16 I

17 On December 18, 1985, Tailfin, Incorporated, appellant, filed its  
18 initial application with Skagit County asking for approval under the  
19 Shoreline Management Act (SMA) of the construction and operation of a  
20 floating net pen facility for the commercial rearing of salmon and  
21 trout. The proposed location is off the east coast of Cypress Island  
22 about 3/4 mile southeast of Eagle Harbor in subtidal waters classified  
23 as shorelines of statewide significance. Under the Skagit County  
24

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1 Shoreline Master Program (SCSMP) the site is within an "aquatic"  
2 environment; the adjacent tideland and shores of Cypress Island are  
3 designated "conservancy".

4 The application was accompanied by a site plan and a completed  
5 environmental checklist.

## 6 II

7 On January 27, 1986, the County Shorelines Administrator asked  
8 Tailfin to provide more detailed project information, particularly  
9 focusing on master program requirements for data on the environmental  
10 characteristics of the site and predictable impacts. (Section  
11 7.02(3)(9), SCSMP). Tailfin responded with brief descriptive material  
12 addressing subjects the County had inquired about.

13 Again in April, responding to a further request from the County,  
14 Tailfin provided additional information in the form of a narrative  
15 report discussing methods of predator control, estimated waste  
16 discharges from the project and a suggested monitoring program.

## 17 III

18 The County issued a determination of nonsignificance (DNS) under  
19 the State Environmental Policy Act on April 10, 1986. The  
20 determination was made subject to the following conditions:

- 21 1. No methods to control predators, other than the use  
22 of nets, shall be allowed unless permitted by the  
23 regulatory agencies with jurisdiction.
- 24 2. An ongoing monitoring program shall be developed and  
25 implemented during the first phase of operation.  
Findings and results would be presented after four  
years of monitoring, addressing:

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- a. Impacts of food, feces and urea discharges on benthic organisms and shellfish in the area.
  - b. Impacts of waste discharges on water quality.
  - c. Patterns of disposal and concentrations of discharges in the surrounding waters.
  - d. Impacts of the operation on the existing potential predator species in the area.
  - e. Impacts of the introduction of medication/antibiotics into the ecosystem.
3. Harvested fish shall not be bled at the site.

#### IV

On May 7, 1986, a public hearing was held on the proposal before the Skagit County hearing examiner. At that time, the Shoreline Administrator provided a staff report, with recommendations for conditions should the proposal be approved. After hearing testimony and considering the record before him, the Hearing Examiner decided in a written decision issued on May 20, 1986, that Tailfin's application should be denied. Tailfin's appeal to the Board followed on July 3, 1986.

#### V

In August of 1986, after Skagit County's decision on Tailfin's application and after Tailfin's appeal to this Board, Dr. Donald P. Weston published through the State Department of Fisheries and Ecology a seminal report entitled: "The Environmental Effects of Floating Mariculture in Puget Sound". This document expressed the then-known,

1 state of knowledge as to the impacts of salmon net-pen facilities in  
2 Washington state.

3 As an outgrowth of the report, Weston developed draft criteria for  
4 the siting and operation of net pen facilities in marine waters of the  
5 state, including Puget Sound, the Strait of Juan de Fuca and the Strait  
6 of Georgia. These draft criteria (hereinafter referred to as the  
7 guidelines) became available from the Department of Ecology on November  
8 26, 1986 - less than two weeks before the commencement of the hearing  
9 in this case.

10 Among other things, the guidelines set forth criteria for current  
11 velocity for various sized operations with various depths beneath the  
12 pens. The guidelines also identified habitats of special significance  
13 where net pen location should be avoided, and called for a detailed  
14 site characterization survey prior to permit application.

## 15 VI

16 Being aware of the Weston report and knowing that siting guidelines  
17 were forthcoming, Tailfin attempted to anticipate what the guidelines  
18 would say and to develop information showing that their site would be  
19 acceptable under them.

20 In this effort, they hired a fisheries scientist who, on November  
21 5, 1986, made a water current survey and a diving survey in the  
22 vicinity of the proposed net pen site. Tailfin presented the testimony  
23 and the study of this scientist at the hearing before this Board, as  
24  
25

1 well as the testimony of a consultant with extensive knowledge of other  
2 net pen sites and operations, and the testimony of a consultant  
3 qualified to discuss diseases of fin fish and the use of antibiotics to  
4 treat them. Much of this information was not available to Skagit  
5 County when it ruled on Tailfin's application.

## 6 VII

7 What Tailfin proposes to do is to locate 32 moored floating pens in  
8 marine waters over subtidal lands, to stock them with fish and to rear  
9 the fish on-site with an ultimate annual production of 410,000 pounds  
10 of salmon. The pens would be installed in two groupings of eight pens  
11 on each side of two eight-foot-wide central walkways oriented  
12 approximately north and south. Each pen would be 40 feet by 40 feet by  
13 20 feet deep. The pens would have nylon-mesh covered railings  
14 extending about four and one-half feet above the water surface. The  
15 structural portions extending above water are to be painted a green or  
16 blue shade calculated to blend with the water. There would be no  
17 storage or other buildings on-site.

18 Around the pens is to be an array of mooring buoys, connected to  
19 low profile wave breaker booms. Anchor chains would lead from the  
20 mooring buoys to the sea bottom and a series of anchors on each side of  
21 the installation. Navigation lights, as required by the Coast Guard,  
22 are to be installed.

23 Most of the facility would be below the surface. The top portions  
24 of the pens and walkways would occupy 1.5 acres of water surface. The

1 buoys and booms around the pens would enclose an area of about five  
2 surface acres, and this five acres would effectively be removed from  
3 public use. On the sea bottom, the total area encompassed by all the  
4 anchors would be 31 acres.

#### 5 VIII

6 The pens, buoys and anchors are to be located off-shore, due east  
7 of the mouth of an intermittent stream which flows out of Lois Lake on  
8 Cypress Island in Section 28, Township 36 North, Range 1 East, Willamet  
9 Meridian.

10 The plan is to float the pens over an area between the 60 foot and  
11 120 foot depth contours, mean lower low water. The bottom contour in  
12 this area is a relatively steep slope downward toward the Bellingham  
13 Channel to the east. The depth under the center of the pens would be  
14 about 90 feet.

15 The nearest structure to the shore on the water surface (a buoy)  
16 would be approximately 700 feet from the ordinary high water mark on  
17 the island's east side. The nearest underwater feature (an anchor)  
18 would be about 500 feet from the ordinary high water mark.

#### 19 IX

20 The operation of the facility would involve use of a work boat,  
21 about 35 feet long and perhaps 10 feet high above the water surface.  
22 The boat would remain on site most of the time except for a visit  
23 weekly to Anacortes to obtain supplies and transport fish. The battery  
24

1 operated navigation lights on site would be recharged by a generator on  
2 the boat.

3 At full production, six to eight people would work the site in  
4 shifts, two or three to a shift. The work boat on site would have a  
5 watchman 24 hours a day, but the rest of the work force would be  
6 transported in and out daily in a smaller boat.

7 No support facilities would be maintained on Cypress Island, the  
8 whole of the land-based features of the operation being conducted in  
9 Anacortes, a little more than five miles away.

10 X

11 The plan for commencing operations is to phase in the pens in  
12 groups of eight. After installation of the first eight pens, the other  
13 groups would follow at three month intervals, requiring a minimum of  
14 nine months to complete the 32 pen array. This time frame might be  
15 extended, depending on when the project is started.

16 XI

17 The activities which are to be conducted on-site include the  
18 placement of smolts in the pens, the daily feeding of the fish, the  
19 moving of fish from pen to pen as they grow larger to avoid  
20 overcrowding, the observation of fish for disease, and the eventual  
21 removal of the grown fish for transport to market. It is estimated  
22 that 18 months would be required from the placement of the first group  
23 of fish on-site until these fish were ready for market. After that,  
24 the facility should have the capability for on-going production, with  
25



1 fish at various stages of their life cycle being moved through the pens  
2 continuously.

3 Tailfin is aiming primarily at the winter market when fresh salmon  
4 from the open sea fishery are not generally available to consumers.  
5 Harvesting will be timed with this object in mind.

#### 6 XII

7 Tailfin proposes to use nets to control predators. For the parts  
8 of the pens in the water this would involve double nets, separated by a  
9 space, to keep out marine predators. Netting would also be stretched  
10 tightly over the tops of the pens to protect the fish from birds.

11 The company has agreed to use no other methods of predator control  
12 beyond the system of nets.

#### 13 XIII

14 Algae or other plant growth might from time to time accumulate on  
15 the net structures. Cleaning of the nets would be accomplished by  
16 drying them in the air, either at the site or elsewhere. The company  
17 has agreed to use no anti-fouling chemicals on the nets.

#### 18 XIV

19 The company has agreed not to bleed any harvested fish at the  
20 site. Further, the company has agreed to perform annual environmental  
21 monitoring to include a benthic survey sampling sediment chemistry and  
22 infauna, a water quality survey documenting the effect of culture  
23 activity on dissolved oxygen and nutrients in the water passing through  
24

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1 the culture structure, and a hydrographic survey measuring current  
2 velocity and direction and giving loading estimates for ammonia and  
3 nitrite/nitrate attributable to the net-pen operations.

4 XV

5 At total projected annual production, Tailfin would need to use  
6 about 820,000 pounds of pelletized dry fish feed annually or an average  
7 of 2,250 pounds daily. The company estimates that, of the food fed,  
8 90% will be consumed and 10% will sink through the net mesh and be  
9 wasted. In excess of 500 pounds of feces will be produced daily,  
10 meaning a total of around 750 pounds of settleable solids falling  
11 towards the sea floor each day.

12 XVI

13 Currents at 6 feet of depth and at 50 feet of depth at the project  
14 site have a mean velocity of about 1/2 knot during weak tidal  
15 conditions. Average currents there can therefore, be assumed to be  
16 generally stronger. Such velocities are more than adequate for net pen  
17 siting under the guidelines.

18 XVII

19 The direction of flow through the Tailfin site is generally  
20 parallel to the shore. We are not persuaded of the existence of  
21 significant tidal gyres or eddies in the immediate area, and find there  
22 is not a flow toward the near shore of Cypress Island at any state of  
23 tide. We are convinced that the solids deposited in the water from the  
24

1 Tailfin site will never reach the shore and, indeed, are not likely  
2 even to migrate toward the shore.

### 3 XVIII

4 We find it unlikely, in fact, that visible accumulation of feed and  
5 feces or changes in sediment chemistry will occur at depths greater  
6 than 75 feet below the pens.

7 For those areas near the project that have less than 75 feet in  
8 depth, accumulation of solids may occur. However, at such depths, we  
9 find there are no aquatic habitats of special significance, as  
10 identified in the guidelines, within 300 feet of the net pens in the  
11 direction of the prevailing tidal currents or within 150 feet in any  
12 other direction.

13 Where visible deposition does occur, we find that it is unlikely to  
14 extend more than 150 feet from the net pens. Loss of biota will occur  
15 where sedimentation is experienced, but the area of impact will be  
16 localized and the resource losses will be comparatively minor.  
17 Appropriate monitoring of sediment chemistry and infauna will be  
18 conducted.

### 19 XIX

20 Pen-reared fish are likely to show more frequent appearance of  
21 disease than wild fish, but diseases among cultured fish do not appear  
22 to be transmitted to wild fish populations. Moreover, experience to  
23 date has failed to show that fish rearing in pens poses any danger,  
24 direct or indirect, to human health.

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There is currently no evidence that the use of antibiotics to combat common diseases in cultured fish has produced any toxic or deleterious effects to the environment. However, there is little available information and a concern exists that doses and periods of use should be limited until further study is done. The guidelines suggest that only antibiotics licensed by the Food and Drug Administration be used, and that these should be used only for disease treatment rather than disease prevention.

XX

The marine waters at the site are classified AA (extraordinary). High water quality is one of the features which recommends the site for net-pen culture. The guidelines isolate certain specific areas where net-pen culture is not generally recommended. But for the Strait of Juan de Fuca, the San Juan Islands and the Strait of Georgia, the guidelines do not identify any water-quality based limitations, if the density of salmon pen operations is less than one million pounds per square nautical mile. The evidence does not show that the installation of Tailfin's facility would cause this density to be exceeded.

At the site proposed, given the depths and current velocities, dilution capacity is substantial and any adverse effects of the project on water quality are likely to be limited in extent and insignificant in impact.

1 Tailfin's annual water quality sampling and hydrographic survey  
2 efforts should be adequate to detect any unanticipated water quality  
3 effects which may occur.

4 XXI

5 No bird and mammalian habitats of special significance within 1,500  
6 feet of the proposed net pen site have been identified.

7 XXII

8 The Tailfin site below Eagle Harbor is in an area relatively  
9 protected from severe weather. There is little exposure there to  
10 violent wave action.

11 The company proposes an anchoring system involving the use of 1  
12 1/2" and 1 1/4" chain leading as far as 450 feet to anchors of from one  
13 to four thousand pounds. The precise type of anchor to be used has not  
14 been determined.

15 Concern was raised about the ability of the anchoring system to  
16 hold on the steeply sloping bottom at the site. There was, however,  
17 evidence that at least one existing mariculture operation has located  
18 on a slope as steep without any problems arising.

19 No bathymetric survey was performed by Tailfin. Rather the company  
20 relied on the "boat sheets" used to prepare the navigation chart for  
21 the area as sufficient to show the bottom contours. These "boat  
22 sheets" derived from soundings linked to sextant readings provide, we  
23 find, an adequate equivalent to an independent bathymetric survey.

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XXIII

The Bellingham Channel between Cypress and Guemes Islands provides a connection between the Strait of Juan de Fuca and the Strait of Georgia.

The Tailfin pens would occupy a patch of water away from the main navigation channel. Boats are now able to traverse the site, but it is not within a major boating route. Moreover, because of the modest size of the installation and its location in relatively deep water, detouring around it on either side would not prove a large problem for boats paralleling the coast.

Tailfin proposes to install all appropriate markings to aid navigators in accordance with Coast Guard requirements.

We find that the proposed facility would cause only a limited reduction in the public's ability to navigate.

XXIV

The east shore of Cypress Island is lightly used by recreationists. There is a steep bank and little, if any beach, to walk on. The Tailfin proposal would not impinge on this limited use, nor in any way affect activities in the intertidal zone.

The area is not presently significant to the commercial fishery or to recreational fishing. If the pens were installed, recreational fishing on the site could occur in all but the five acres enclosed by the buoys and booms. There is a likelihood that wild fish and other marine life may be attracted to the area by the presence of the

1 unconsumed feed which falls through the pens. Recreational fishing may  
2 be improved as a result.

3 The area under the pens and in the near vicinity is not of  
4 particular interest to recreational divers.

5 In sum, we find no incompatibility with existing uses in the  
6 placement of the pens as proposed.

7 XXV

8 Hanson Properties, Incorporated, has proposed to construct a  
9 "conference and recreation center" centered at Eagle Harbor. The  
10 facility as proposed would encompass 747 acres of Cypress Island and  
11 include a lodge (190 units), conference center, residential cluster  
12 (170 units), small craft marina (100 slips), airfield, 18-hole golf  
13 course and other recreational activities. As of the date of our  
14 hearing, no final action had been taken on this project, but there was  
15 concern expressed that the Tailfin proposal might conflict with the  
16 potential development.

17 Considering the distance from the harbor, appearance, size and mode  
18 of operation of the Tailfin installation, we find that it would not be  
19 incompatible with the proposed "conference and recreation center". We  
20 voice no opinion on that proposal's conformance with applicable law.

21 XXVI

22 Other net pen facilities, earlier approved by Skagit County, are  
23 located off the east coast of Cypress Island in Deepwater Bay, over two  
24

1 miles by water from the Tailfin site. While made aware of these  
2 facilities, we have been provided with little information about them  
3 and have consciously avoided considering them in any way as a  
4 precedential justification for the Tailfin proposal.

#### 5 XXVII

6 We recognize and find that the shorelines of most of Cypress Island  
7 are still largely pristine. We know also that such unspoiled island  
8 shores are becoming a rarity in this state.

9 At the same time, we are cognizant that salmon net pen culture,  
10 properly sited, is a water dependent enterprise which holds the  
11 potential for productive use of the state's marine waters which could  
12 return significant benefits to the state and nation.

13 Moreover, we do not believe such potential, if realized, would  
14 necessarily be at the expense of commercial fishing. Because the  
15 overall market for fresh fish is expanding and because the net pen  
16 operations are aimed at a different seasonal market than open sea  
17 commercial fishing, the two types of fish producing enterprises may  
18 prove to be complementary.

#### 19 XXVIII

20 The economic viability of fish rearing in net pens in this country  
21 is unproven. There is evidence of success abroad, particularly in  
22 Norway which currently exports pen-reared salmon to the United States.

23 Nonetheless, uncertainty over whether the Tailfin operation is  
24 likely to be a commercial success does not cause us concern, so long as



1 insurance and bonding are maintained adequate to assure removal, if  
2 necessary. The physical installation proposed would be relatively easy  
3 to dismantle and the environmental effects of the operation could  
4 essentially be erased in a reasonably short span of time.

5 XXIX

6 The Tailfin site is in a relatively remote area. Residential or  
7 other development on Cypress Island from which the installation could  
8 be viewed is almost non-existent. It would be within the line of sight  
9 of residences on Guemes Island across the channel about two miles to  
10 the east, but it is doubtful that it would be very noticeable from  
11 there because of the low profile presented.

12 The facility would be seen primarily by recreationists on the  
13 island or boaters and fishermen on the water. However, given the  
14 scale, elevation, color of the project, its ease of removal, and the  
15 duration of the permit, we are not prepared to find that the Tailfin  
16 facility would represent a significant adverse intrusion on the  
17 aesthetics of the natural shoreline.

18 XXX

19 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
20 adopted as such.

21 From these Findings of Fact, the Board comes to these

22 CONCLUSIONS OF LAW

23  
24  
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I

A Pre-Hearing Order, herein entered on September 17, 1986, set forth issues to be considered. The Order then provided:

The hearing shall be limited to the foregoing statement of issues unless any party petitions the Board to amend the issues on or before October 1, 1986.

Intervenors entering the case after October 1, 1986, were made parties on the express condition that they take the pleadings as they found them.

Neither in the Pre-Hearing Order nor in any petition received prior to October 1, 1986, was an issue raised regarding whether an environmental impact statement should have been prepared pursuant to the State Environmental Policy Act, chapter 43.21C RCW.

At the commencement of the hearing on the merits on December 3, 1986, Intervenor Hanson Properties, Incorporated, attempted to inject such an issue into the proceedings. Tailfin's objection, thereto, was sustained. We repeat here our conclusion announced orally that the issue was not timely raised and that the Pre-Hearing Order should govern according to its terms.

II

On November 6, 1986, Skagit County and the Department of Ecology moved for a remand of this matter back to the County for further consideration. This Motion was denied by separate written Order of the Board issued November 21, 1986.

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(18)

1 One of the bases for the Motion was that Tailfin allegedly had  
2 failed to provide sufficient information to the County pursuant to  
3 Section 7.02(2)(B)(a) of the Skagit County Shoreline Master Program  
4 (SCSMP). The Board's Order noted that, in its processing of the  
5 application, the County had found the information it received  
6 sufficient to form the basis for a decision on the merits and that  
7 Tailfin was not presenting a different project on appeal to this Board.

8 During the hearing and in final argument, the issue of a  
9 compliance with Section 7.02(2)(B)(a) was raised again. We adhere to  
10 our initial ruling.

11 We have found that the information provided to the County was  
12 generally responsive to the procedural requirements of the SCSMP  
13 (Finding of Fact II, above). But, even if this were not the case,  
14 given a well-defined project, the nature of the record made before the  
15 County is essentially irrelevant to our de novo review function.

16 The record made before us is a new record which may differ from  
17 the record made before the local government and contain new  
18 information not available there. San Juan County v. Department of  
19 Natural Resources, 28 Wn. App. 796, 626 P.2d 995 (1981).

20 The County having rendered its decision on the substance of the  
21 proposal, our job on review is to determine if the project is  
22 consistent with the substantive requirements of the SCSMP and the  
23 Shoreline Management Act (SMA), chapter 90.58 RCW. If the contours of  
24

1 the project itself are sufficiently definite for our determination of  
2 these matters, our review may proceed. See Hayes v. Yount, 87 Wn.2d  
3 280, 552 P.2d 1038 (1976). We conclude that this project meets the  
4 threshold of definiteness necessary for our review.

5 As noted in our Finding of Fact VI above, much of the  
6 information presented to us was not available to Skagit County when it  
7 ruled on Tailfin's application. The County is in no way to be faulted  
8 for proceeding as it did on the record made before it. We recognize  
9 the difficulty from the local perspective when an applicant  
10 substantially adds to its presentation on appeal. See Groeneveld v.  
11 Snohomish County, SHB No. 87-17 (1986). Nonetheless, we must decide  
12 on the record before us.

13 We do not believe that it is generally to an applicant's advantage  
14 to wait until proceedings are appealed to this Board to really do its  
15 homework. A case well prepared at the local level may well prevent an  
16 appeal. It is safe to say that no applicant is deliberately seeking  
17 to become embroiled in the appeal process.

### 18 III

19 As provided for in the Pre-Hearing Order, appellant lodged a  
20 Motion for Partial Summary Judgment prior to hearing, seeking to  
21 eliminate from the case the issue of economic competition between  
22 commercial fishermen and the net-pen industry.

1 Initially, the Board granted this motion, in part, stating that  
2 competition as an issue should be confined to the question of  
3 conflicts of competing uses for the same environmental site. As the  
4 hearing progressed, however, it became apparent that the question of  
5 whether the project would recognize and protect the statewide interest  
6 over the local interest made evidence about economic impacts relevant,  
7 and that this kind of information inevitably touched upon economic  
8 competition. Accordingly, the motion was ultimately denied.

#### 9 IV

10 For purposes of our review, we conclude that the project before us  
11 is comprised of the physical features described in the Findings of  
12 Fact above, together with the operational limitations the applicant  
13 has agreed to. These limitations encompass the conditions which were  
14 included in the DNS and comprise a project conditioned as follows:

15 1. The applicant shall obtain all applicable permits from other  
16 agencies with jurisdiction.

17 2. The applicant shall obtain a lease from the Department of  
18 Natural Resources.

19 3. The applicant shall maintain the water quality to conform with  
20 the Department of Ecology regulations for Class AA waters.

21 4. The net pen facility shall be designated with appropriate  
22 navigational markings in accordance with Coast Guard requirements.

23 5. The proposed method for sewage disposal shall be submitted to  
24 and approved by the appropriate health authorities.

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1       6. The applicant shall adhere to all applicable policies and  
2 regulations of the SCSMP.

3       7. The applicant shall complete a benthic baseline survey  
4 consisting of sediment chemistry and benthic infauna sampling which  
5 shall be conducted after installation of the net pens, but before they  
6 are stocked with fish.

7       8. An annual summer monitoring dive shall be conducted to include  
8 information on:

- 9       a) sediment chemistry and infauna sampling;  
10       b) water quality sampling;  
11       c) a hydrographic survey

12       9. Antibiotic use shall be limited to antibiotics licensed by the  
13 FDA.

14       10. After four years of monitoring, the County shall be provided  
15 with a report showing findings and results on the following:

- 16       a) Impacts of food, feces and urea discharges on benthic  
17 organisms and shellfish in the area.  
18       b) Impacts of waste discharges on water quality.  
19       c) Patterns of disposal and concentrations of discharges in the  
20 surrounding waters.  
21       d) Impacts of the operation on the existing potential predator  
22 species in the area.  
23       e) Impacts of the introduction of medication/antibiotics into the  
24 ecosystem.

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1 11. No methods to control predators, other than the use of nets,  
2 shall be allowed. A double net arrangement shall be used on submerged  
3 portions of the pens:

4 12. Harvested fish shall not be bled at the site.

5 13. No anti-fouling chemicals shall be used to treat or  
6 subsequently clean the nets.

7 V

8 The SCSMP substantially restates language from the SMA itself  
9 insofar as policies for shorelines of statewide significance are  
10 concerned. SCSMP Section 5.03 states:

11 The legislature determined that in order to fulfill the  
12 goal of statewide public interest in shorelines of  
13 statewide significance, local master programs shall give  
14 preference to uses that are consistent with the policies  
15 applied in the following order, pursuant to RCW 90.58.020.

16 1. The statewide interest should be recognized and  
17 protected over the local interest.

18 2. The natural character of the shorelines should be  
19 preserved.

20 3. Uses of the shorelines of statewide significance  
21 should result in long term benefits to the people of the  
22 state.

23 4. The natural resources and ecological systems of  
24 shorelines of statewide significance should be protected.

25 5. Public access to publicly owned areas in shorelines of  
26 statewide significance should be increased.

27 6. Recreational opportunities for the public should be  
increased on shorelines of statewide significance.

1 We conclude that the project as proposed is consistent with the  
2 foregoing list of preferences under the SCSMP and the SMA.

3 VI

4 Net pen salmon rearing like other forms of aquaculture serves the  
5 statewide interest through the production of food for a broad market.  
6 See Cruver v. San Juan County and Webb, SHB 202 (1976); Save Our Sound  
7 Citizens Committee v. King County and American Sea Vegetable Co., SHB  
8 82-51 (1983).

9 VII

10 Any development would to some degree impinge upon preservation of  
11 the natural character of the shorelines. Here, however, the degree of  
12 intrusion is slight. The aesthetics of the natural scene will not be  
13 significantly degraded. The disruption of natural systems will be  
14 minimal.

15 VIII

16 Long term benefit for the people of the state will be realized by  
17 food production and economic gains, if the project is successful. With  
18 proper safeguards built into the permit, we conclude that such positive  
19 potential outweighs any likelihood of long-term negative impacts should  
20 the venture fail.

21 IX

22 The natural resources and ecological systems of the shorelines will  
23 be largely protected. No impacts on upland areas are anticipated.



1 Intertidal impacts, if any, will be minor. Any adverse affects to  
2 water quality or the biota will be highly localized and can be  
3 adequately watched through appropriate monitoring. No resources or  
4 natural habitats of special significance are close to the site.

5 X

6 Neither public access to public shorelines nor recreational  
7 activities will be much influenced by this project. The reduction of  
8 the rights of the public in navigable waters is limited.

9 XI

10 The SCSMP sets forth criteria for conditional use permits in  
11 Section 11.03. Most of these are subsumed in the discussion and  
12 conclusions above. However, the following (as paraphrased) remain for  
13 our consideration:

- 14 1. That the proposed use of the site and design of the project  
15 will be compatible with other uses in the area.  
16 2. That consideration should be given to the cumulative impact of  
17 additional requests for like actions in the area.  
18 3. That the public interest suffers no detrimental effect.

19 We conclude the project is consistent with the criteria for  
20 conditional use permits.

21 XII

22 In its staff report the County recited numerous possible use  
23 conflicts raised by the project, including conflicts with (a) the  
24

1 commercial fisherman's market, (b) boating and sports fishing, (c)  
2 wildlife attracted to the pens as predators, and (d) proposed marina or  
3 other development in the area.

4 Our review has convinced us that no significant use conflicts will  
5 arise from this project and that in terms of siting and design it meets  
6 the compatibility requirement of the SCSMP.

### 7 XIII

8 We are sensitive to the high scenic, recreational, and educational  
9 value of the shores of Cypress Island and concur that any development  
10 which is proposed for the area must be evaluated with a view toward the  
11 preservation of these values.

12 However, this does not mean, and the SMA does not command, that no  
13 development may occur there at all. The challenge is, rather, to  
14 insure that any development which does go forward is reasonable and  
15 appropriate for the particular setting.

16 We would agree that projects of this kind cannot be  
17 indiscriminately multiplied nearby. We would further agree that, given  
18 the character of the surroundings, the potential for this sort of thing  
19 is distinctly limited in the immediate neighborhood.

20 What we conclude here, then, is only that the record made in this  
21 case, under the circumstances now existing, has persuaded us that this  
22 individual project can be allowed at the specific site proposed under  
23 the terms of operation contemplated consistent with shoreline law and  
24 regulations now in effect.

25 FINAL FINDINGS OF FACT,  
26 CONCLUSIONS OF LAW AND ORDER  
27 SHB NO. 86-29

XIV

Finally, we deal with the all-encompassing issue of the public interest. In this we make our judgment recognizing that this case involves no problem of regulating private interests in real property. Because both the land and water concerned belong to the public, we are presented with a question of policy lacking usual limits.

Appellants draw our attention to RCW 15.85.010, the aquaculture marketing statute through which the Legislature has recognized the potential value of "aquatic farming" and has encouraged its development.

Respondents direct us to RCW 28B.20.320, a 1923 statute by which "the salt waters and the beds and shores of the islands constituting San Juan County and of Cypress Island in Skagit County" were designated "an area of preserve of marine biological materials useful for scientific purposes."

Neither of these statutes bear directly on the propriety of a permit decision under the SMA. However, they do illustrate that the siting of developments in this locality necessitates evaluation of potentially competing statewide interests. At bottom, we are asked to conclude that the value of preservation of this site in a natural state outweighs the value of food and economic production of the net pen operation. This we are unable to do, given what we consider to be the very modest likely environmental impact of this project.

1       Based on the totality of facts and circumstances, we conclude that  
2 there will be no significant detriment to the public interest from thus  
3 project, if it is pursued in accordance with the conditions set forth  
4 in Conclusion of Law IV, above, and if the following additional  
5 conditions are imposed:

6       1. Only pelletized dry feed shall be used.

7       2. Antibiotics shall be used only for disease treatment and not  
8 for disease prevention.

9       3. The development shall have coverage for \$10,000 minimum  
10 liability insurance and \$5,000 minimum performance bond. (This  
11 requirement may be met through meeting the requirements of other  
12 government agencies.

13       4. The monitoring program shall be conducted under methods  
14 approved by the Washington State Department of Ecology. The monitoring  
15 data shall be presented annually to Skagit County, the State Department  
16 of Ecology, the State Department of Fisheries and the State Department  
17 of Natural Resources.

18       5. If Tailfin determines to cease rearing fish at this facility,  
19 the facility will be removed within six months of the removal of all  
20 fish from the pens.

21       6. Tailfin shall prepare and submit to the County a detailed  
22 description of its anchoring system, identifying the precise type of  
23 anchor to be used, prior to installation.

24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
SHB NO. 86-29

1        7. The fish slaughter waste shall be disposed of at on-shore  
2 processing facilities.

3        8. The shoreline substantial development and conditional use  
4 permit shall expire five years from the date of issuance. A new permit  
5 shall be required to continue operations.

1 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
2 adopted as such.

3 From these Conclusions of Law the Board enters this

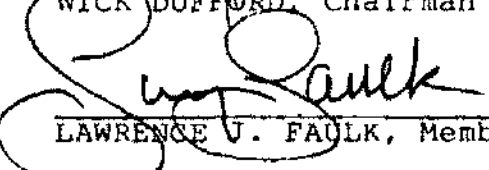
4 ORDER


5 The action of Skagit County is reversed and this matter is remanded  
6 to Skagit County for issuance of a shoreline substantial development  
7 and conditional use permit containing the conditions enumerated in  
8 Conclusion of Law IV and XIV hereof.

9 DONE at Lacey, Washington this 22nd day of July, 1987.

10 SHORELINES HEARINGS BOARD

11   
12 WICK DUFFORD, Chairman

13   
14 LAWRENCE J. FAULK, Member

15   
16 JUDITH A. BENDOR, Member

17   
18 NANCY BURNETT, Member

19   
20 ROD KERSLAKE, Member